

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

HEALTH MIDWEST,

Plaintiff,

VS.

Case No. 02CV326118

JEREMIAH W. (JAY) NIXON,
in his official capacity as the
Attorney General for the State of Missouri,

Defendant.

**PLAINTIFF'S ANSWERS TO DEFENDANT'S
FIRST SET OF INTERROGATORIES**

Plaintiff Health Midwest, by and through its counsel, respond to Defendant's First Set of Interrogatories to Health Midwest as follows:

I. General Objections

1. Health Midwest objects to each interrogatory to the extent it calls for information protected by the attorney-client privilege and/or the attorney work product doctrine.
2. Health Midwest objects to the Definitions to the extent they alter or exceed the obligations imposed by the Missouri Rules of Civil Procedure.
3. Health Midwest objects to each interrogatory to the extent it calls for information that is proprietary, confidential or trade secret.

INTERROGATORIES

INTERROGATORY NO. 1: Identify the date, time and place of the meeting of the Board of Directors at which the Board approved the filing of, or authorized counsel to file, this lawsuit, and identify the votes of each Director present (voting or abstaining) on that question.

ANSWER:

The Board of Directors of Health Midwest ("Board") met at Research Medical Center located at 2304 E. Meyer Blvd., Kansas City, Missouri at 4 pm on Monday November 25th, 2002 and authorized the filing of the lawsuit by a unanimous vote of the directors present. A copy of the minutes is attached **Exhibit 1**.

INTERROGATORY NO. 2: Identify all documents referring to, reflecting, or relating in any way to the decision of the board to authorize this lawsuit.

ANSWER:

Other than documents protected by the attorney-client privilege and/or the attorney work-product doctrine to which Health Midwest objects, Health Midwest identified the minutes attached as **Exhibit 1**.

INTERROGATORY NO. 3: Identify the dates, times and places of any meetings other than the meeting described above at which the possibility of litigation arising out of or relating to a sale of the assets of the Corporation was discussed.

ANSWER:

The potential for litigation was discussed at the Executive Committee meetings on November 21 and 22, 2002. These meetings commenced at 7:00 a.m. and were held at Menorah Medical Center.

INTERROGATORY NO. 4: Identify all records stating, indicating, or reflecting that the Corporation is a nonprofit, public benefit corporation duly organized and validly existing in good standing under the laws of Missouri, including all filings with (and correspondence with) the Missouri Secretary of State made by the Corporation or its predecessors.

ANSWER:

The articles and bylaws and annual reports of Health Midwest all make reference to the Corporation as a nonprofit, public benefit corporation. Articles were provided to your office on October 23 and 31, 2002. Bylaws are attached as **Exhibit 2**. The most recent annual report is attached as **Exhibit 3**.

INTERROGATORY NO. 5: Identify all business conducted or managed by the Corporation now or at any time in the past and, with respect to each such business, identify the date on which the business was begun or acquired by the Corporation, whether such business is still conducted by the Corporation and, if not, when the business was discontinued.

ANSWER:

The Corporation conducts its business through a number of subsidiary entities. A list of all such entities, past and present, the dates of creation and, if applicable, the dates of dissolution (the "Corporate History") is attached as **Exhibit 4**.

INTERROGATORY NO. 6: With respect to any business that has been discontinued as identified above, describe with specificity the circumstances which led to the business being discontinued, the date, time and location of the meeting of the Board of Directors at which the discontinuation was authorized, the votes of each Director present (voting or abstaining) with respect to the discontinuation, and all documents referring to, reflecting, or relating in any way to the decision to discontinue the business or the discontinuation itself.

ANSWER:

Business discontinuations are described in the Corporate History attached as **Exhibit 4**.

INTERROGATORY NO. 7: With respect to any business that has been discontinued as identified above, specify the value of the business to Health Midwest or any of its subsidiaries as both a fixed dollar amount and annual income. If the business had no value, specify the loss attributable to that business.

ANSWER:

A summary of the value of any business discontinued by Health Midwest is attached as **Exhibit 21**.

INTERROGATORY NO. 8: With respect to any such discontinuation, describe the process by which public input was solicited by the Board before its approval of the discontinuation, and the extent to which such input was reflected in that approval.

ANSWER:

All Health Midwest entity boards consist of volunteer community leaders and as such means for receiving the views of the community. With respect to any such dissolution or discontinuance, Health Midwest or the appropriate subsidiary gave any notice to the Attorney General required by law.

INTERROGATORY NO. 9: With respect to any business still being conducted or managed by the Corporation, describe any discussions, investigations, plans or possibilities that such business could or should be discontinued and, with respect to each, identify the dates, time and locations of each meeting of the Board of Directors at which such a discussion occurred or such an investigation, plan or possibility was referred to, mentioned, or approved, and identify all documents referring to, reflecting, or relating in any way to such discussions, investigations, plans or possibilities that any business could or should be discontinued.

ANSWER:

Senior management has had informal discussions regarding updating or replacing facilities in eastern Jackson County. HCA has committed to certain restrictions on its ability to close facilities pursuant to Section 5.2 of the Asset Purchase Agreement delivered to you on November 22, 2002.

INTERROGATORY NO. 10: With respect to any such potential discontinuation, describe the process by which public input was solicited by the Board and the extent to which such input was reflected in the Board's consideration of such a potential discontinuation.

ANSWER:

Any discussions regarding updating or replacing facilities have been informal and would not reached the stage at which they would be discussed with the Board of Directors of the affected facilities or the Board of Health Midwest.

INTERROGATORY NO. 11: Describe the circumstances of each business acquisition by the Corporation, and identify all documents attending, reflecting, or any way relating to each acquisition.

ANSWER:

The Corporate History attached as **Exhibit 4** describes all business acquisitions by Health Midwest. In addition, the integration agreements whereby each hospital was admitted into the system were previously provided to you on October 31, 2002.

INTERROGATORY NO. 12: Identify all deeds, wills, written contracts or other writings, and all statutes, ordinances, contracts or franchises with respect to which the Corporation has standing to seek the declarations it has sought in this lawsuit.

ANSWER:

Health Midwest has standing to pursue this action based on Mo. Rev. Stat. § 527.020 and Missouri Rule of Civil Procedure 87.02.

INTERROGATORY NO. 13: Identify every corporate entity with which the Corporation has or would like to have legal relations and with respect to which the Corporation seeks the declarations it has sought in this lawsuit.

ANSWER:

HM Acquisition, L.L.C. and its parents and subsidiaries, including HCA, Inc.

INTERROGATORY NO. 14: Identify the date, time, place and verbatim contents (as nearly as possible) of each statement by the Attorney General which challenges the conduct of the Corporation's business or its legal relations.

ANSWER:

On or about November 24, 2002, an authorized representative of the Missouri Attorney General stated that the twenty day review period for the sale would not run until, "sufficient information has been given," to the attorney general's office to allow him to "reach a conclusion as to whether the sale is in the best interest of the public," as quoted in the Kansas City Star.

On or about November 18, 2002, the Missouri Attorney General stated, "I have no box to check and say yes or no on this deal. The 20-day time period just provides me with the time I need to take my legal tools out of the woodshed if (the acquisition) is not the best deal for the community," as quoted in the Kansas City Business Journal.

On or about November 15, 2002, an authorized representative of the Missouri Attorney General stated, "The review usually takes place within that 20-day time period. But if we have resolvable concerns, it probably could be something that would go a little longer," as quoted in the Kansas City Business Journal.

An authorized representative of the Missouri Attorney General stated that because of its status as a nonprofit, Health Midwest, "holds (its) assets in trust for the benefit of those served," and that Health Midwest is charged with showing the sale is fair "from the view of the beneficiaries," on or about November 9, 2002, as quoted in the Kansas City Star.

The Missouri Attorney General stated "The Health Midwest hospital system is an essential player in the health care delivery system in Kansas City, and steward to hundreds of millions of dollars of nonprofit assets created by and for the communities it serves. I intend to exercise the authority of my office to protect the public and these charitable assets in this transaction," on or about October 31, 2002, as quoted in the Health Law Reporter.

The Missouri Attorney General represented that the Board of Health Midwest must show that Health Midwest could not long survive as a nonprofit corporation, and that the Board must also show that the newly created foundation will, as closely as possible, continue the charitable mission of Health Midwest on or about November 12, 2002, as mentioned in the Kansas City Star Business Weekly.

An authorized representative of the Missouri Attorney General represented that a nonprofit's board is not free to sell its assets unless it can show the sale is in the best interest of those it serves and that to do that, the nonprofit has to prove it has become impossible or impracticable for it to

continue its charitable mission on or about November 9, 2002, as mentioned in the Kansas City Star.

An authorized representative of the Missouri Attorney General encouraged the Research Foundation to speedily move forward with the process of separating itself from Health Midwest in anticipation of the transfer of Research Medical Center and its related entities on or about November 19, 2002, at a meeting of the Board of Directors of the Research Foundation.

An authorized representative of the Missouri Attorney General encouraged the Baptist Lutheran Medical Center Foundation to consider whether it has an equitable claim to part of the proceeds of the sale of Health Midwest assets and whether the Foundation should seek independence and separation from Health Midwest and even to demand separation or independence if necessary on or about November 13, 2002 at a meeting of the Board of Directors of the Baptist Lutheran Medical Center Foundation.

The Attorney General or an authorized representative thereof stated that the Attorney General has the authority to reject the sale of Health Midwest's assets on or about November 14, 2002, as mentioned in a press release from the Attorney General's office.

In addition to these specific statements, the Attorney General has made numerous other statements, in transcripts of public hearings and press releases from his office, that are available on the Attorney General's own website. Further, similar comments to those mentioned above and in the materials on the Attorney General's website mirror numerous undocumented comments made to representatives of Health Midwest during the many discussions between the Attorney General's office and Health Midwest.

INTERROGATORY NO. 15: Identify the contents of the performance improvement plan initiated by the Board in or around May of 2001 ("the May 2001 Performance Improvement Plan"), as referred to in Paragraph 7 of the Petition.

ANSWER:

The performance improvement plan ("Project Delta") was created by Cap Gemini, a leading national health care consultant, on behalf of Health Midwest to create a more efficient, cost-effective health care delivery system through the implementation of a number of initiatives. These are described in detail on the Health Midwest website, relevant portions of which are attached as **Exhibit 5**. The original Project Delta plan and updates prepared by Cap Gemini also reflect the contents of Project Delta. These documents will be provided subject to protective order as **Exhibit 6**.

INTERROGATORY NO. 16: Describe the financial challenges facing the Corporation in May of 2001 referred to in Paragraph 7 of the Petition, and identify all documents referring, reflecting or relating in any way to these challenges. Describe when each such challenge arose or was first noticed by or on behalf of the Corporation, when each was brought to the attention of the Board of Directors, the cases of each such challenge, and the actions taken by the Board with respect to each such challenge prior to the implementation of the May 2001 Performance Improvement Plan.

ANSWER:

Absent the implementation of the Project Delta initiatives, it was projected that Health Midwest would lose \$40 million dollars in 2002 and \$75 million by the end of 2004. These potential financial challenges are described in more detail in Exhibit 6, which will be provided subject to protective order.

INTERROGATORY NO. 17: Identify all documents referring, reflecting or relating in any way to the creation or implementation of the May 2001 Performance Improvement Plan.

ANSWER:

The documents referring to the creation or implementation of Project Delta are attached as Exhibit 6, which will be provided subject to protective order.

INTERROGATORY NO. 18: Identify the date, time and place of the meeting of the Board of Directors at which the May 2001 Performance Improvement Plan was approved, and identify the votes of each Director present (voting or abstaining) on the question of whether to implement the May 2001 Performance Improvement Plan.

ANSWER:

The board minutes approving Project Delta and each update presented by Cap Gemini to the Board are attached as Exhibit 6, which will be provided subject to protective order.

INTERROGATORY NO. 19: Identify all correspondence with Cap Gemini which led to, refers to, reflects, or in any way relates to the Corporation retaining Cap Gemini to analyze and report on the challenges facing the Corporation, including but not limited to documents relating in any way to Cap Gemini's compensation.

ANSWER:

Such correspondence, including engagement letters and Cap Gemini fees, are included in **Exhibit 6**, which will be provided subject to protective order.

INTERROGATORY NO. 20: Identify all documents reflecting, referring to, or in any way relating to Cap Gemini's findings, including all notes or memoranda or other materials by, from, to or provided to any Board member reflecting, referring to, or in any way relating to Cap Gemini's findings.

ANSWER:

Cap Gemini's findings as reported to the Board are attached as **Exhibit 6**, which will be provided subject to protective order.

INTERROGATORY NO. 21: Identify all documents made available to Cap Gemini for its use in analyzing and reporting on the challenges facing the Corporation, and identify all documents created by, referred to by, or in any way relied upon by Cap Gemini in preparing its study, including any documentation relied upon by Cap Gemini in projecting that Corporation would suffer a net operating loss of \$75 million by 2004.

ANSWER:

Cap Gemini engaged in a comprehensive, multi-month investigation of Health Midwest and its subsidiaries and all hospital and system documentation (with the exception of confidential patient information and privileged information) and staff were made available for their review. Other

than as discussed in the reports included in **Exhibit 6** (which will be provided subject to protective order), it is not known which of the documents were relied on by Cap Gemini.

INTERROGATORY NO. 22: Identify the date, time and place of all meetings of the Board of Directors at which the Cap Gemini study was proposed, discussed, authorized, presented or referred to.

ANSWER:

Minutes of all Board meetings where Project Delta results were presented are attached as **Exhibit 6**, which will be provided subject to protective order.

INTERROGATORY NO. 23: Identify all documents referring, reflecting or relating in any way to the creation or implementation of Project Delta.

ANSWER:

All documents reflecting the creation or implementation of Project Delta are attached as **Exhibit 6**, which will be provided subject to protective order.

INTERROGATORY NO. 24: Identify the date, time and place of the meeting of the Board of Directors at which Project Delta was approved, and identify the votes of each Director present (voting or abstaining) on the question of whether to implement Project Delta.

ANSWER:

Minutes of the Board meeting where Project Delta results was explored are attached as **Exhibit 6**, which will be provided subject to protective order.

INTERROGATORY NO. 25: Identify all experts or other third parties retained by the Board to design or implement Project Delta and for each such expert or third party identify the date, time and place of the Board meeting at which such retention was approved, the votes of each

Director present (voting or abstaining) on the retention of such expert or third party, and identify all documents referring to, reflecting, or relating to such retention, including but not limited to documents relating to the compensation of such experts or third parties.

ANSWER:

The Board retained Cap Gemini to design and implement Project Delta. The minutes wherein the Board approved the retention of Cap Gemini and correspondence between Health Midwest and Cap Gemini regarding such retention are included in **Exhibit 6**, which will be provided subject to protective order.

INTERROGATORY NO. 26: Describe the manner in which the Corporation had deteriorated, or would deteriorate, which caused the Board of Directors to consider alternatives to maintaining its business approach during the time frame referenced in Paragraph 11 of the Petition.

ANSWER:

The implementation of the Project Delta initiatives resulted in improvement in the Health Midwest system's bottom line. However, the system cannot access the capital needed to update facilities, and buy needed equipment. Lack of access to capital and the system's debt load coupled with financial performance led the Board to consider the alternatives mentioned in Paragraph 11 of the Petition. These financial conditions are included in the Project Delta information attached as **Exhibit 6**, which will be provided subject to protective order, as well as the audited and unaudited financial statements provided to you on November 14, 2002, and the financial documents being provided in response to the Request for Documents issued in connection with the Interrogatories. In addition, the Ponder Presentation to the Executive Committee attached as **Exhibit 11** also summarizes these financial challenges.

INTERROGATORY NO. 27: Identify all documents referring to, reflecting, or relating in any way to the deterioration (or impending deterioration) referenced in Paragraph 11 of the Petition, including all notes or memoranda or other materials by, from, to, or provided to any Board member reflecting, referring to, or in any way relating to such deterioration.

ANSWER:

Documents reflecting the deterioration referenced in Paragraph 11 of the Petition are included in the Project Delta information attached as **Exhibit 6**, which will be provided subject to protective order as well as the audited and unaudited financial statements provided to you on November 14, 2002, and the financial documents being provided in response to the Request for Documents issued in connection with the Interrogatories. In addition, the Ponder Presentation to the Executive Committee attached as **Exhibit 11** also summarizes these financial challenges.

INTERROGATORY NO. 28: Identify the date, time and place of all meetings of the Board of Directors at which the deterioration (or impending deterioration) referenced in Paragraph 11 of the Petition was proposed, discussed, authorized, presented or referred to.

ANSWER:

The minutes of the Board meetings where this deterioration was discussed are included in **Exhibit 6**, which will be provided subject to protective order, as well as other Board minutes provided to you on October 31, 2002.

INTERROGATORY NO. 29: Identify each and every alternative referred to in Paragraph 11 of the Petition considered by the Board of Directors.

ANSWER:

The alternatives considered by the Board were (1) maintaining status quo; (2) maintain status quo with new management; (3) dissolve the system back into independent hospitals (desystemize); (4) seek a merger with or sale to a nonprofit partner; (5) seek a merger with or sale to St. Luke's; (6) renegotiate the Overland Park and Independence Hospital leases with the landlord Triad; (7) renegotiate the Triad letter of credit with Bank of America; (8) develop a joint venture with a for-profit partner; and (9) sell the assets to a for-profit entity. The Board discussed the advantages and disadvantages of each alternatives, a list of which is attached as **Exhibit 7**. Board members were able to evaluate the alternatives and a chart documenting the pros and cons for each alternative as discussed by the Board is attached as **Exhibit 7**.

INTERROGATORY NO. 30: With respect to the alternative of "merging with a non-profit partner" identified in Paragraph 11 of the Petition:

- a) describe with specificity the alternative considered by the Board;

- b) identify each non-profit partner with respect to which a merger was considered, identify the individuals representing this prospective partner to whom this alternative was communicated or with whom this alternative was discussed, and identify the date, time, place of and each individual involved in each meeting with anyone representing this prospective partner;
- c) identify all documents referring to, reflecting, or in any way relating to communications with the entities or individuals identified in the preceding sub-paragraph;
- d) identify all documents referring to, reflecting, or any way relating to this alternative and/or the Board of Director's consideration of it; and
- e) identify the date, time and place of all meetings of the Board of Directors at which the alternative was proposed, discussed, authorized, presented or referred to.

ANSWER:

The executive committee discussed merging with a nonprofit partner on July 9, 2002 and the Board discussed this on August 6, 2002. The advantages and disadvantages of this alternative are summarized on Exhibit 7, and the minutes of these meetings were provided to you on October 31, 2002. No specific partner was discussed, and no communications took place with a particular entity.

INTERROGATORY NO. 31: With respect to the alternative of "merger with a local hospital system" identified in Paragraph 11 of the Petition:

- a) describe with specificity the alternative considered by the Board;
- b) identify each local hospital system with respect to which a merger was considered, identify the individuals representing this prospective partner to whom this alternative was communicated or with whom this alternative was discussed, and identify the date, time,

place of and each individual involved in each meeting with anyone representing this prospective partner;

c) identify all documents referring to, reflecting, or in any way relating to communications with the entities or individuals identified in the preceding sub-paragraph;

d) identify all documents referring to, reflecting, or in any way relating to this alternative and/or the Board of Director's consideration of it; and

e) identify the date, time and place of all meetings of the Board of Directors at which the alternative was proposed, discussed, authorized, presented or referred to.

ANSWER:

The executive committee discussed merging with a local hospital system on July 9, 2002 and the Board discussed this on August 6, 2002. The advantages and disadvantages of this alternative are summarized on Exhibit 7, and the minutes of these meetings were provided to you on October 31, 2002. The local hospital system considered was St. Luke's/Shawnee Mission Health System.

INTERROGATORY NO. 32: With respect to the alternative of divesting "part or all of the Health Midwest system back into community hospitals" identified in Paragraph 11 of the Petition:

a) describe with specificity the alternative considered by the Board;

b) identify each part of the Health Midwest system with respect to which divestiture was considered, identify the individuals representing this part of the Health Midwest system to whom this alternative was communicated or with whom this alternative was discussed, and identify the date, time, place of and each individual involved in each meeting with anyone representing this part of the Health Midwest system;

- c) identify all documents referring to, reflecting, or in any way relating to communications with the entities or individuals identified in the preceding sub-paragraph;
- d) identify all documents referring to, reflecting, or in any way relating to this alternative and/or the Board of Director's consideration of it; and
- e) identify the date, time and place of all meetings of the Board of Directors at which the alternative was proposed, discussed, authorized, presented or referred to.

ANSWER:

The executive committee discussed divesting part or all of the system back into separate hospitals (desystemize) on July 9, 2002 and the Board discussed this on August 6, 2002. The advantages and disadvantages of this alternative are summarized on **Exhibit 7**, and the minutes of these meetings were provided to you on October 31, 2002. This alternative was not formally discussed with any individual hospitals although the chair of each hospital operating division serves on the Health Midwest Board.

INTERROGATORY NO. 33: With respect to the alternative of renegotiating "certain agreements and debt obligations" identified in Paragraph 11 of the Petition:

- a) describe with specificity the alternative considered by the Board;
- b) identify each agreement or debt obligation with respect to which renegotiation was considered, identify the individuals representing each other party to such agreement or debt obligation to whom this alternative was communicated or with whom this alternative was discussed, and identify the date, time, place of and each individual involved in each meeting with anyone representing this other party;
- c) identify all documents referring to, reflecting, or in any way relating to communications with the entities or individuals identified in the preceding sub-paragraph;

- d) identify all documents referring to, reflecting, or in any way relating to this alternative and/or the Board of Director's consideration of it; and
- e) identify the date, time and place of all meetings of the Board of Directors at which the alternative was proposed, discussed, authorized, presented or referred to.

ANSWER:

The executive committee discussed renegotiating certain agreements and debt obligations (Triad leases and letter of credit) on July 9, 2002 and the Board discussed this on August 6, 2002. The advantages and disadvantages of this alternative are summarized on Exhibit 7, and the minutes of these meetings were provided to you on October 31, 2002.

INTERROGATORY NO. 34: With respect to the alternative of "a joint venture with a for profit partner" identified in Paragraph 11 of the Petition:

- a) describe with specificity the alternative considered by the Board;
- b) identify each for profit partner with respect to which a joint venture was considered, identify the individuals representing this prospective joint venturer to whom this alternative was communicated or with whom this alternative was discussed, and identify the date, time, place of and each individual involved in each meeting with anyone representing this prospective partner;
- c) identify all documents referring to, reflecting, or in any way relating to communications with the entities or individuals identified in the preceding sub-paragraph;
- d) identify all documents referring to, reflecting, or in any way relating to this alternative and/or the Board of Director's consideration of it; and
- e) identify the date, time and place of all meetings of the Board of Directors at which the alternative was proposed, discussed, authorized, presented or referred to.

ANSWER:

The executive committee discussed a joint venture with a for-profit partner on July 9, 2002 and the Board discussed this on August 6, 2002. The advantages and disadvantages of this alternative are summarized on **Exhibit 7**, and the minutes of these meetings were provided to you on October 31, 2002. No specific partner was discussed or communicated with. As part of the bids delivered on September 5, 2002, and the prior written expressions of interest (both of which were previously delivered to you on November 14, 2002) several parties mentioned this as an alternative.

INTERROGATORY NO. 35: With respect to the alternative of a "sale of assets to a for profit buyer" identified in Paragraph 11 of the Petition:

- a) describe with specificity the alternative considered by the Board;
- b) identify each for profit corporation with respect to which a sale was considered, identify the individuals representing this prospective partner to whom this alternative was communicated or with whom this alternative was discussed, and identify the date, time, place of and each individual involved in each meeting with anyone representing this prospective partner;
- c) identify all documents referring to, reflecting, or in any way relating to communications with the entities or individuals identified in the preceding sub-paragraph;
- d) identify all documents referring to, reflecting, or in any way relating to this alternative and/or the Board of Director's consideration of it; and
- e) identify the date, time and place of all meetings of the Board of Directors at which the alternative was proposed, discussed, authorized, presented or referred to.

ANSWER:

The executive committee discussed sale of assets to a for-profit buyer on July 9, 2002 and the Board discussed this on August 6, 2002. The advantages and disadvantages of this alternative are summarized on **Exhibit 7**, and the minutes of these meetings were provided to you on October 31,

2002. As of the August 6, 2002 Board meeting, the entities with which this alternative had been discussed are described in the answer to Interrogatory No. 36.

INTERROGATORY NO. 36: Identify each unsolicited expression of interest from entities contemplating purchase of all assets owned by the Corporation in early 2002 as alleged in Paragraph 12 of the Petition, and identify all documents referring to, reflecting, or relating in any way to such expressions of interest.

ANSWER:

HCA, Inc. ("HCA"), Tenet HealthSystem ("Tenet") and Ardent Health Services ("Ardent") each submitted unsolicited written expressions of interest to purchase the assets of the Health Midwest system. These written expressions were provided to your office on November 14, 2002.

INTERROGATORY NO. 37: Identify the date, time and place of each meeting of the Board of Directors at which the expressions of interest referred to Paragraph 12 of the Petition were presented, reviewed, evaluated, mentioned, discussed, or in referred to in any way.

ANSWER:

The Executive Committee discussed these expressions at various meetings from the time the expressions of interest were received by Health Midwest until August 2002. Minutes of the Executive Committee during this period were provided to your office on October 31, 2002. The Board discussed these expressions on August 6, 2002. These Board minutes were also provided to you on October 31, 2002.

INTERROGATORY NO. 38: Describe each factor considered by the Board of Directors in reaching the decision that each expression of interest was legitimate as referred to in Paragraph 13 of the Petition, and identify all documents including all notes or memoranda or other materials by, from, to, or provided to any Board member reflecting, referring, or in any way relating to such determination that each such expression of interest was legitimate, and identify the votes of

each Director present (voting or abstaining) on the question of whether each expression of interest was legitimate.

ANSWER:

The price coupled with the other commitments, such as offering all employees jobs and committing to a community board and some indigent care, made in the written expressions of interest collectively were relied upon by the Board in determining that these expression of interest were legitimate. The votes of the board at its August 6, 2002 meeting are reflected in the minutes provided to you on October 31, 2002.

INTERROGATORY NO. 39: Identify all documents referring to, reflecting, or relating to the Board's engagement of Ponder & Company ("Ponder") alleged in Paragraph 14 of the Petition, including but not limited to all documents describing, referring to, or reflecting Ponder's experience in hospital mergers and acquisitions as well as the compensation paid or to be paid to Ponder for this service.

ANSWER:

The documents relating to the Board's engagement of Ponder include (1) the engagement letter between Health Midwest and Ponder dated July 16, 2002; (2) a marketing pamphlet distributed by Ponder, and (3) a statement of qualifications distributed by Ponder, collectively attached as Exhibit 8.

INTERROGATORY NO. 40: Identify the date, time and place of the meeting of the Board of Directors at which the engagement of Ponder was approved, and identify the votes of each Director present (voting or abstaining) on the question of whether to retain Ponder.

ANSWER:

The Board unanimously voted to approve the engagement of Ponder on August 6, 2002. Those Board meeting minutes were previously produced to you on October 31, 2002.

INTERROGATORY NO. 41: Identify each independent financial or legal adviser rendering the advice alleged in Paragraph 15 of the Petition, describe the advice that each gave the Board, and identify all documents referring to, reflecting, or relating in any way to such advice, including all notes or memoranda or other materials by, from, to, or provided to any Board member reflecting, referring, or in any way relating to such advice.

ANSWER:

Ponder was the exclusive independent financial advisor to Health Midwest on the sale of its assets. On August 6, 2002, Ponder presented to the Board a timeline of their proposed process, which is attached as **Exhibit 9**. The Health Midwest legal counsel referred to in Paragraph 15 of the Petition is Seigfreid Bingham Levy Selzer & Gee PC and Health Midwest objects to any documents or information protected by the attorney-client privilege and/or the work-product doctrine.

INTERROGATORY NO. 42: Describe with specificity the process for receiving and reviewing formal bids approved by the Board on or about August 6, 2002, as alleged in Paragraph 15 of the Petition, and identify all documents reflecting, referring to, or relating in any way to such process and/or the Board's decision to approve it, including all notes or memoranda or other materials by, from, to, or provided to any Board member reflecting, referring to, or in any way relating to such approval.

ANSWER:

The Board authorized Ponder and its legal counsel to provide to the bidders and other interested parties an asset purchase agreement ("Agreement") in a form suitable to the board that contained post-closing covenants with respect to the operation of the system facilities to ensure that the bidder would act in the best interests of the community. The bidders were asked to provide a purchase price, commit to a fixed dollar of capital infusion by a fixed date, and commit to the post-closing operating covenants by September 5, 2002. To aid the bidders in their deliberations, Health Midwest provided 10 boxes of due diligence over the course of the month. The letters describing the bid process are attached as **Exhibit 10**. The 10 boxes of due diligence boxes are provided in response to your Request for Production of Documents. ("Bidders' Due Diligence Boxes").